

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 13-Civ-14032-GRAHAM/LYNCH

GARY LEGORE,

Plaintiff

v.

BAY STATE MILLING COMPANY,
a foreign profit corporation,

Defendant.

_____ /

AMENDED COMPLAINT

COMES NOW, the Plaintiff, GARY LEGORE, [hereinafter referred to as "LEGORE"] by and through his by and through his undersigned attorney, and hereby files this Amended Complaint against Defendant, BAY STATE MILLING COMPANY [hereinafter referred to as "BAY STATE"] and as grounds therefore alleges as follows:

JURISDICTION, PARTIES AND VENUE

1. This matter in controversy concerns violation of Florida Civil Rights Act, Fla.Stat §760, et.seq. ["FCRA"], failure to hire.
2. This is an action for damages and is brought pursuant to the Florida Civil Rights Act, Fla.Stat §760, et.seq. ["FCRA"]
3. At all times material hereto, Plaintiff maintained a residence in Maryland and in Florida.
4. Defendant, BAY STATE is a foreign profit corporation with a principal address of 100 Congress Street, 2nd Floor, Quincy, Massachusetts 02169 with a facility in Martin County, Florida.

5. Martin County, Florida is proper venue for this action in that the subject matter of this action occurred there, namely Plaintiff applied for a position with the Defendant to work in Martin County, Florida.
6. Plaintiff is an employee as that term is defined under the Florida Civil Rights Act, Fla.Stat §760, et.seq. ["FCRA"].
7. Defendant is an employer as that term is defined under the Florida Civil Rights Act, Fla.Stat §760, et.seq. ["FCRA"].

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Plaintiff contends that he has exhausted all administrative remedies, prior to the filing of this action.
9. In particular, Plaintiff on or about January 2011, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission, as well as with the Florida Commission on Human Relations.
10. It has been more than one-hundred eighty (180) days since the filing of Plaintiff's Charge of Discrimination.
11. The Florida Commission on Human Relations has not made any determinations as it relates to Plaintiff's charge.

COMMON ALLEGATIONS

12. Bay State Milling owns and operates a flour mill facility located in Indiantown, Florida.
13. Bay State Milling posted on its website a vacancy for a Miller-Milling Experience for the Indiantown, Florida location.

14. The job duties of the position included supervision hourly plant employees as it relates to regulatory and manufacturing practices, training for safety, operational procedures and manufacturing procedures.
15. On or about January 10, 2011, Plaintiff sent a copy of his resume to William Raiola, the Indiantown Plant Manager.
16. On or about January 11, 2011, Plaintiff contacted Mr. Raiola to discuss the vacancy and arrange a time for an interview.
17. During this call Plaintiff also advised Mr. Raiola that he had more than twenty (20) years of experience in the milling industry.
18. In response, Mr. Raiola stated "I don't want to waste your time," "I am looking for a younger man with maybe two years experience." Someone he could "groom for a plant manager job down the line and for the future".
19. He further responded that Plaintiff would not be considered for the position.
20. Plaintiff is a fifty four (54) year old man who was previously employed as a Miller in the Bay State Milling facility in Clifton, New Jersey.
21. In response Plaintiff asked Mr. Raiola to repeat himself and when he reiterated the same, the conversation ended.
22. While previously employed with Bay State, Plaintiff performed his duties and responsibilities in an exemplary manner and was a well-regarded employee.
23. After his conversation with Mr. Raiola, Plaintiff contacted Defendant's Human Resources office and a Vice President of Defendant, Mike Long, to apprise them of Mr. Raiola's discriminatory comments and complaining of the discriminatory position taken by Mr. Raiola.

24. Human Resources admitted that Mr. Raiola wanted a “younger” person for the Miller position, however Mr. Raiola was not referring to age but rather years of experience.

25. On the very same day that Plaintiff complained of the discrimination, Mr. Long made it clear to Human Resources that Plaintiff should not be considered for any position within the company and characterized him as “dangerous.”

26. Plaintiff was subsequently offer interviews for other positions with the Defendant but was denied employment with any one position.

27. On or about April 15, 2011, Bay State Milling filled the Indiantown, Florida position with a twenty-three (23) year old with little experience.

28. As a result of Defendant’s discriminatory and retaliatory practices, Plaintiff has suffered and will continue to suffer damages.

**COUNT I – AGE DISCRIMINATION, IN VIOLATION OF
FLORIDA CIVIL RIGHTS ACT 760
FAILURE TO HIRE**

Plaintiff LEGORE realleges and references each and every allegation contained in the preceding paragraphs¹ through 28, and incorporates the same as if set forth fully herein.

29. This is an action for damages as a result of discriminatory treatment and failure to hire brought pursuant to the Florida Civil Rights Act of 1992 (FCRA), Fla. Stat. §760.10.

30. By and through its agents, supervisors and employees, Defendant engaged in and otherwise permitted a pattern and practice of unlawful age discrimination on the basis of his age.

31. By and through its agents, supervisors and employees, Defendant engaged in and otherwise permitted a pattern and practice of unlawful age discrimination by failing to re-hire Plaintiff.

32. As a result of the aforementioned conduct as alleged in this Court, Defendant violated the FCRA.

33. As a result of the aforementioned conduct and treatment of Plaintiff LEGORE, he has sustained a loss of earnings and other damages.

34. As a result of the aforementioned actions of Defendant, Plaintiff LEGORE has suffered severe emotional distress.

35. Defendant has failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the work place and to prevent it from occurring.

36. As a direct and proximate result of Defendant's, willful, knowing and intentional discrimination, Plaintiff LEGORE has suffered and will continue to suffer pain and suffering, extreme and severe emotional distress and mental anguish; Plaintiff LEGORE has suffered and will continue to suffer a loss of earnings and other employment related benefits and job opportunities. As a result, Plaintiff LEGORE is thereby entitled to general and compensatory damages as well as punitive damages in an amount to be proven at trial.

37. As a further direct and proximate result of the Defendant's violations as herein described, Plaintiff LEGORE has been compelled to retain the services of the undersigned law firm. Plaintiff LEGORE has incurred and will continue to incur reasonable attorney's fees and costs. Plaintiff requests that his attorney's fees

be awarded pursuant to Fla. State §760.11(6).

WHEREFORE, Plaintiff prays that judgment be entered in his favor against the Defendant as follows: That Plaintiff LEGORE be awarded general and compensatory damages and reinstatement, front pay and back pay, and prejudgment interest and punitive damages; that Plaintiff LEGORE be awarded reasonable attorney's fees and costs pursuant to Florida Statute §760.11(6); that Plaintiff LEGORE be awarded such other relief as the Court deems just and proper.

COUNT II – RETALIATION, IN VIOLATION OF
FLORIDA CIVIL RIGHTS ACT 760
FAILURE TO HIRE

Plaintiff LEGORE realleges and references each and every allegation contained in the preceding paragraphs 1 through 28, and incorporates the same as if set forth fully herein.

38. This is an action for damages as a result of retaliatory treatment and failure to hire brought pursuant to the Florida Civil Rights Act of 1992 (FCRA), Fla. Stat. §760.10.

39. By and through its agents, supervisors and employees, Defendant engaged in and otherwise permitted a pattern and practice of unlawful retaliation following Plaintiff's complaint that he was being discriminated against on the basis of his age.

40. By and through its agents, supervisors and employees, Defendant engaged in and otherwise permitted a pattern and practice of unlawful retaliation by failing to hire Plaintiff.

41. As a result of the aforementioned conduct as alleged in this Count, Defendant

violated the FCRA.

42. As a result of the aforementioned conduct and treatment of Plaintiff LEGORE, he has sustained a loss of earnings and other damages.

43. As a result of the aforementioned actions of Defendant, Plaintiff LEGORE has suffered severe emotional distress.

44. Defendant has failed to comply with its statutory duty to take all reasonable and necessary steps to eliminate discrimination from the work place and to prevent it from occurring.

45. As a direct and proximate result of Defendant's, willful, knowing and intentional discrimination, Plaintiff LEGORE has suffered and will continue to suffer pain and suffering, extreme and severe emotional distress and mental anguish; Plaintiff LEGORE has suffered and will continue to suffer a loss of earnings and other employment related benefits and job opportunities. As a result, Plaintiff LEGORE is thereby entitled to general and compensatory damages as well as punitive damages in an amount to be proven at trial.

46. As a further direct and proximate result of the Defendant's violations as herein described, Plaintiff LEGORE has been compelled to retain the services of the undersigned law firm. Plaintiff LEGORE has incurred and will continue to incur reasonable attorney's fees and costs. Plaintiff requests that his attorney's fees be awarded pursuant to Fla. State §760.11(6).

WHEREFORE, Plaintiff prays that judgment be entered in his favor against the Defendant as follows: That Plaintiff LEGORE be awarded general and compensatory damages and reinstatement, front pay and back pay, and prejudgment interest and

punitive damages; that Plaintiff LEGORE be awarded reasonable attorney's fees and costs pursuant to Florida Statute §760.11(6); that Plaintiff LEGORE be awarded such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all matters so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent via the Electronic Document Filing System to: Jennifer A. Schwartz, Esq., JACKSON LEWIS, LLP, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 3500, Miami, Florida 33131-2374, jennifer.schwartz@jacksonlewis.com, Counsel for Defendant Bay State Milling, and Aarrin Golson, Esq., U.S. Equal Employment Opportunity Commission, Miami District Office, Miami Tower, 100 SE 2nd Street, 15th Floor, Miami, Florida 33131, aarrin.golson@eoc.gov, Counsel for the EEOC, on this 23rd day of August 2013.

/s/ Arthur Schofield, Esq.
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